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August 1, 2024

Hon. Ona T. Wang
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Eyvgenyi E. Scherban v. Merrill Lynch, et al.*
Case No.: 14-cv-6312 (VSB) OTW

Your Honor:

I am the attorney for Eyvgenyi E. Scherban, the plaintiff herein. Please accept this letter as a formal response to defendant Merrill Lynch's correspondence (filed as an objection to the amended complaint) dated July 30, 2024.

As indicated in the defendant's objection, this action was commenced on August 8, 2014 by the plaintiff, his siblings Ruslan E. Scherban and Yevgen E. Scherban, and the Estates of Yevgenyi A. Scherban and Nadejda Nikitina. The complaint sought a turnover, an accounting and declaratory relief. Following motion practice, all claims, except for those of plaintiff Eyvgenyi E. Scherban, were directed to FINRA dispute resolution. Upon the exchange of documents, which led to the discovery of certain forged powers of attorney, the claimants in the FINRA arbitration amended their claim to include eighteen causes of action, many of which were based on fraud. (DKT 64-12). The claims before FINRA were ultimately dismissed in February of 2019 based upon the statute of limitations. The award was confirmed and corrected by this Court on June 23, 2021. (DKT 68).

On February 9, 2022, defendant Merrill Lynch filed an Answer to the complaint. (Dkt 72). On March 8, 2022, this case was stayed upon the application of the plaintiff, based upon the Russian armed forces invasion in Ukraine. As this Court may recall the plaintiff is a domiciliary and resident of Ukraine.

I appeared as counsel for plaintiff Eyvgenyi E. Scherban on February 6, 2024. The following day, this Court directed counsel for the remaining plaintiffs to inform the Court as to whether those plaintiffs' claims have been addressed with finality. On June 13, 2024, Your Honor issued an Order finding that plaintiff Eyvgenyi E. Scherban is the only remaining plaintiff in this action. The Order further directed that plaintiff Eyvgenyi E. Scherban file an amended

complaint by July 12, 2024. (DKT 109). Plaintiff's time to file the amended complaint was extended to July 29, 2024. (DKT 111).

On July 29, 2024, plaintiff Eyvengi E. Scherban filed an amended complaint, naming additional parties and asserting additional causes of action based upon facts discovered during discovery in the FINRA arbitration. Summons for the additional parties were also filed. The amended complaint was subsequently rejected twice. I was advised by the SDNY attorneys services office, earlier today, that the pleading was rejected because defendant Merrill Lynch's aliases in the caption did not match those that were entered on the ECF docket. I have corrected the issues relating to the parties on the ECF docket.

I did not interpret this Court's June 13, 2024 Order as being limited to conforming the pleading to reflect that Eyvengi E. Scherban was the only remaining plaintiff. Defendant Merrill Lynch highlights that the complaint was filed ten years ago, but omits that the answer was first filed on February 9, 2022 and that the proceeding was staying approximately one month later.

Plaintiff has good cause to join additional parties and to assert different and additional causes of action based on the discovery in the FINRA proceeding. Plaintiff should be afforded the right to amend his pleading. Indeed, this is the first time that the pleading has been amended. I believe that the proposed amended complaint, a copy of which is attached hereto, sets forth the factual reasons for the necessity of the joinder of additional parties and causes of action. The majority of the facts in the amended pleading are based on information discovered subsequent to the filing of the complaint. Should Your Honor require a formal motion for leave to file an amended complaint, it is respectfully requested that the Court Order a briefing schedule.

Thank you for your consideration herein.

Very truly yours,

Alexander Dudelson
Alexander M. Dudelson

Via ECF: All parties